IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8421 of 2005
With
SPECIAL CIVIL APPLICATION No. 8423 of 2005
To
SPECIAL CIVIL APPLICATION No. 8426 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G.G. BRAHMBHATT & 4 - Petitioner(s)

Versus

STATE OF GUAJRAT THR' SECRETARY & 2 - Respondent(s)

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Appearance :
MR AS SUPEHIA for Petitioner No(s).: 1,2,3,4,5.
MR GUNVANT B SHAH for Petitioner No(s).: 1,2,3,4,5.
MR DIPEN DESAI, AGP for Respondent No(s).: 1.
MR SA DESAI for Respondent No(s).: 2.
NOTICE NOT RECD BACK for Respondent No(s).: 3.
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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date : 04/08/2005

ORAL JUDGMENT

RULE. Mr.Desai, learned AGP, waives service of notice of rule on behalf of respondent No.1 and

Mr.S.A.Desai, learned advocate waives service of notice of rule on behalf of the respondents No.2 and 3. Since common point is involved in all these petitions, the same are taken up for hearing together with the consent of the parties.

By filing these petitions, the petitioners have challenged the order dated 31st March, 2005 which is at Annexure-B. By the said order, pay scale of the petitioners is reduced and consequential order of recovery of amount is also passed against the petitioners.

The petitioners are serving on the post of Personal Assistant Grade-II. It seems that the University granted them higher pay scale for which there was some audit objection and on the basis of such audit objection, the impugned order was passed and the pay scale of the petitioners have been reduced and they have been put in the lower pay scale. Against the said order, the petitioners have filed the present petitions. The petitioners are also apprehending recovery of the amount which they have got in view of the pay scale given to them by the university.

Mr.Supehia, learned advocate for the petitioners submitted that there was upgradation in the pay-scale of the post which the petitioners were holding and therefore, the University has rightly upgraded the pay scale of the petitioners. He further submitted that the

University is the sole authority to take such decision with regard to the revision of upgradation of the pay scale of the petitioners. He further submitted that the State Government has no authority to interfere with the said aspect and the University has committed an error by relying upon the direction given by the State Government or by relying upon some audit objection which was carried out by the State Government.

In response to the notice of this Court, affidavit-in-reply has been filed by the University pointing out that it is a grant-in-aid institution and entire fund comes by way of grant from the State Government and, therefore, the University is required to act as per the direction given by the State Government and before granting such upgradation in pay scale prior approval of the State Government was required, which was not taken.

Mr.Desai, learned AGP, appearing on behalf of the State Government has submitted that since prior approval of the State Government was not taken by the University, the State Government has directed the University to reduce the pay scale of the petitioners and to pass consequential order of recovery.

Mr.Supehia learned advocate for the petitioners has relied upon certain unreported judgements to substantiate his say that the State Government has no authority to interfere with the affairs of the University. Some of the unreported judgements which are relied upon by him are as

under :

(i) Decision of this Court rendered in the case of Bipinbhai N. Kapadia V. Gujarat Agricultural University in Special Civil Application No.6131 of 1995, on 20/03-9-2002

(ii) Decision of this Court rendered in the case of V.A.Vadukar in Special Civil Application No.9467 of 1998, on 25-8-2004.

(iii) Decision of the Supreme Court rendered in the case of State of Punjab & Anr. Vs. Sardari Lal & Ors on 28-11-2000.

He submitted that in view of above decisions, the university was justified in upgrading the pay scales of the petitioners. He further submitted that the impugned order is passed without hearing the petitioners and, therefore, also the said order is bad in law.

It is not in dispute that before passing the impugned order no hearing was given to the concerned petitioners. In that view of the matter, without going into the merits of the case, the State Government through Agriculture and Cooperation Department is directed to

pass fresh order in accordance with law after hearing the concerned petitioners. In my view, before passing such order, which has got some civil consequences, hearing was required to be given to the petitioners as they were getting higher pay scale since considerable period. At the time of hearing, it will be open for the petitioners to argue that the State Government has no jurisdiction over the subject matter, however, on this point I am not expressing any opinion and it is entirely left to the State Government to decide whether it has any control over the affairs of the University and whether any prior approval was required to be taken by the university before upgrading the pay scale of its employees. This part is kept open for adjudication by the appropriate authority when it is raised before it by the petitioners. The State Government may inform the date of hearing to the University, which in turn will inform the petitioners about the same. It is assured by Mr.Supehia that his clients will cooperate with early hearing of the matter. It is also argued by Mr.Supehia that the petitioners are submitting to the jurisdiction of the State Government without prejudice to their rights and contentions that the State Government has no authority to interfere with the affairs of the university.

As stated herein above, after hearing the petitioners appropriate order may be passed in accordance with law. If the ultimate order is against the petitioners, it will be open for the petitioners to challenge the same in accordance with law. Accordingly, these petitions are partly allowed by quashing and

setting aside the impugned order which is at Annexure-B to the petition and the order lowering the pay scale of the petitioners is also set aside. If any action is taken in pursuance of the said order, the same is also quashed and set aside.

In view of aforesaid direction, these petitions are partly allowed. Rule made absolute accordingly with no order as to costs.

(P.B.MAJMUDAR, J.)

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